Filed 3/17/16 In re Jose L. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JOSE L., a Person Coming Under the Juvenile Court Law.	B262202 (Los Angeles County Super. Ct. No. CK82971)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.L., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Stephen Marpet, Commissioner. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

C.L. (Mother) appeals from the juvenile court's order denying her Welfare and Institutions Code section 388 petition and terminating her parental rights over Jose L., Jr. (Baby), now age two and a half.[1] She argues the court erred because she demonstrated changed circumstances and that reunification services were in Baby's best interest. We disagree and affirm.

BACKGROUND

Baby came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on November 5, 2013, when Baby was two months old. A reporting party had informed DCFS both Mother and Baby's father, Jose L., Sr. (Father),[2] were incarcerated in connection with a shooting.[3]

On November 14, 2013, DCFS filed a petition alleging Baby was at risk of harm due to Mother's history of substance abuse, failure to regularly participate in court-ordered substance abuse rehabilitation and random drug testing, and inability to maintain custody over her other three children, Ray, age eight and a half; Jordan, age five and a half; and Jacob (Brother), age three and a half. The court detained Baby and placed him with his current foster parents in December 2013. On May 5, 2014, the court sustained the petition. The court ordered monitored visits for Mother and denied her reunification services. On July 14, 2015, after some procedural delays,[4] the court denied Mother's

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

[2] Father is not a party to this appeal.

[3] Although the shooting occurred in November 2012, Mother was not arrested until October 2013.

[4] On September 15, 2014, at the adjudication and disposition hearing, the court denied Mother's request for a one-week continuance to file a section 388 petition, terminated Mother's parental rights, and freed Baby for adoption. The same day, Mother filed a notice of appeal. On September 24, 2014, Mother filed a motion in the juvenile court requesting a rehearing of the section 366.26 termination determination. On October 15, 2014, the juvenile court granted Mother's motion for a rehearing. Before the section 366.26 rehearing, Mother also filed a section 388 petition. On November 13, 2014, Mother requested the appellate court dismiss the appeal filed on September 15th in light of the rehearing; the appellate court ordered a dismissal on November 18, 2014. The

section 388 petition for reunification services and terminated her parental rights under section 366.26, finding none of the statutory exceptions applied. Mother appealed.

DISCUSSION

On appeal, Mother argues the court erred because she demonstrated changed circumstances and that reunification services were in Baby's best interest. She argues the court also erred in terminating her parental rights. Mother failed, however, to demonstrate reunification services would be in Baby's best interest, and we therefore affirm.

Mother contends the standard of review is abuse of discretion combined with substantial evidence. (See, e.g., *In re Jasmon O.* (1994) 8 Cal.4th 398, 415–416 [applying abuse of discretion but concluding substantial evidence supported the order]; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317–318 [adopting abuse of discretion but concluding the order was not supported by substantial evidence]; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1065–1067 [adopting abuse of discretion but acknowledging that "evaluating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling"].) DCFS, on the other hand, contends we should review for abuse of discretion. (See, e.g., *In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.)

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juvenile court denied Mother's section 388 petition on November 14, 2014. On January 12, 2015, Mother appealed the November 14, 2014 order denying her section 388 petition. On March 2, 2015, the juvenile court vacated the September 15, 2014 orders and set a new section 366.26 hearing. Mother filed a new section 388 petition on March 6, 2015. The court granted Mother a hearing on her section 388 petition for June 24, 2015, but it was continued to July 14, 2015. On April 1, 2015, Mother moved to stay the appeal filed on January 12, 2015 from the November 14, 2014 orders pending outcome of the juvenile court proceedings; the court ordered a stay on April 7, 2015. On July 14, 2015, the juvenile court held a combined section 388 and 366.26 hearing. The court denied Mother's section 388 petition and terminated her parental rights under section 366.26. Mother appealed the July 14, 2015 orders on July 30, 2015. On September 18, 2015, this court granted Mother's request to withdraw her notice of appeal filed on January 12, 2015, from the November 14, 2014 orders. Mother's July 30, 2015 appeal from the July 14, 2015 orders is at issue here.

We need not reconcile these decisions because, under either standard, the court's order was proper. When reviewing for an abuse of discretion, we uphold an order unless it was "arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice." (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180.) When reviewing for substantial evidence, we uphold an order when it is supported by evidence that is "'reasonable in nature, credible, and of solid value;'" in this review, """"[a]ll evidence favorable to respondent is assumed true and the unfavorable is discarded.'""" (*In re Lynna B.* (1979) 92 Cal.App.3d 682, 695.)

To prevail on a section 388 petition, a parent must successfully demonstrate that a modification of the court's order is (1) supported by a change in circumstances and (2) in the best interests of the child. (Welf. & Inst. Code, § 388; Cal. Rules of Court, rule 5.570(h)(1)(D); *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) This is because "[a]fter the termination of reunification services, a parent's interest in the care, custody and companionship of the child is no longer paramount. [Citation.] Rather, at this point, the focus shifts to the needs of the child for permanency and stability. [Citation.] In fact, there is a rebuttable presumption that continued foster care is in the best interest of the child [citation]; such [a] presumption obviously applies with even greater strength when the permanent plan is adoption rather than foster care." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.) Mother could not demonstrate the best interest prong, therefore we need not reach whether she demonstrated the change of circumstance prong in our analysis of the court's denial of the section 388 petition.

Here, substantial evidence supported that reunification services would not be in the best interest of Baby. First, DCFS removed Baby from Mother when Baby was less than three months old. Mother's contact with Baby since that time has been limited to monitored visits. Although Mother has suggested she and Baby have a strong bond, the record contains no evidence Baby misses Mother, asks for her, or is sad to leave her after visits; in fact, when Mother first started visiting Baby he was prone to "crying spells." Second, and in contrast, Baby has lived with the same foster parents since December 2013 and has developed a significant bond with them. DCFS has observed Baby

exhibiting signs of distress when separated from, and signs of happiness when reunited with, his foster parents, whom DCFS has praised as being "loving, proactive advocates for" him. Third, Baby's foster parents are eager to adopt him and have already adopted Brother, who is closest in age to Baby of Baby's siblings. Baby and Brother are "inseparable."

Fourth, Mother did not consistently visit Baby and she occasionally behaved questionably during visits. As to her consistency, Mother missed or canceled a number of visits; also, during the first six months after Baby was detained, Mother visited Baby only eight times. A year and a half into the proceedings, when the court questioned Mother's counsel about why Mother had recently missed several visits, counsel simply stated he had "advised her that visitation is of the utmost importance." At this stage in the proceedings, Mother should not have needed counseling as to the importance of visits. As to her behavior during visits, Mother occasionally broke visitation rules (e.g., by taking photos of Baby and posting them on Facebook), and seemed distracted by her phone during some visits.

Fifth, and perhaps most important, Mother has a long history of substance abuse, and missed several court-ordered drug tests during these proceedings. At least two of her children had positive toxicology tests at birth, and Mother lost custody of all three of Baby's half siblings due to her substance abuse and failure to obey related court orders. While Mother's most recent efforts to conquer her addiction are laudable, they do not prove she is sober and stable enough to adequately care for Baby, who has physical and developmental challenges. The trial court permissibly weighed Mother's significant history of substance abuse and failure to participate in drug testing more than her comparatively short sobriety. (See *In re Angel B.*, *supra*, 97 Cal.App.4th at p. 463.)

Here, although Mother may have had a demonstrated interest in continued visitation with Baby, Baby's interests were "paramount." (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 464.) Substantial evidence supported that continued visitation would not have been in the best interest of Baby because, as a toddler, Baby requires stability and safety, neither of which Mother is able to provide. (See *ibid*. [concluding that

prolonged visitation with little chance of altering the existing plan for adoption was not in the best interest of the children].) We affirm.

DISPOSITION

The order denying C.L.'s Welfare and Institutions Code section 388 petition and terminating her parental rights is affirmed.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.